THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.18174 of 2007

29.8.2007

Between:
Vullengula Ekanandam, S/o.Venkaiah

…Petitioner

And

The Tahsildar, Thimmapur, Karimnagar District

…Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.18174 of 2007

ORDER:

Respondent herein issued notice No.B/590/2007, dated 30.5.2007, to Palle Kusuma Kumari, Palle Sankar, Palle Syam Prasad and Palle Syamala – legal heirs of Palle Palaiah – calling upon them to submit objections within fifteen days as to why the land admeasuring Acs.5.00 in survey No.629/6 situated at Sultanpur village of Thimmapur Mandal in Karimnagar District, should not be resumed from them for public purpose. Petitioner alleges that the land was originally assigned to Palle Papaiah, Ex-serviceman, in 1972. He died in 1984. After his death, land was mutated in favour of legal heirs of Papaiah in 1984. They sold the property to Kalawala Malla Reddy under registered sale deed dated 31.3.2006 after obtaining necessary mutation orders from the Revenue Divisional Officer (RDO), Karimnagar. Malla Reddy in turn sold the property to petitioner on 17.11.2006. Petitioner contends that the land was assigned to Ex-serviceman as per G.O.Ms.No.1117, dated 11.11.1993, conditions of inalienability is not attached to the land assigned to Ex-serviceman. Therefore they approached the Court contending that the notice is issued without jurisdiction.

Learned Counsel for petitioner reiterated petitioner's possession as projected in the affidavit accompanying the writ petition. He also submits that as long as land continues to be in holding and occupation of original assignee, Government can resume the land but when once the land is sold by the assignee the same cannot be resumed. **Opposing** the writ petition learned Assistant Government Pleader for Revenue (Assignment) submits that when petitioner challenged similar notice in W.P.No.16902 of 2007, this

Court dismissed the writ petition on 13.8.2007. Secondly he submits that the impugned communication is s notice and therefore petitioner can raise all the grounds before the respondent.

In W.P.No.16902 of 2007, petitioner herein challenged similar notice. This Court disposed of the writ petition observing that petitioner can raise all issues before the Tahsildar. The notice challenged in this writ petition is also similar to the one challenged in W.P.No.16902 of 2007. Secondly, condition of alienability/inalienability or condition of subsequent resumption by grantor are permanent encumbrances to the land assigned/ granted and the subsequent alienee cannot prevent State from resuming land. In an unreported judgment of this Court in W.P.Nos.25047 and 25048 of 2006, dated 04.12.2006, this Court considered this aspect of the matter and explained the position as below.

> It is no gainsaying that the State as a grantor can always deprive the grantee of the benefit of the land. When the land is assigned as a grant by the State, whether or not there is a condition in the terms of grant, the State can always resume the land from the grantee subject to the conditions contained in the order of grant (**Calcutta, South Satara v L.M.Deshpande**[1] and **S.V.V.S.V.Wadia v State of Sourashtra**[2]). In fact the question of payment of ompensation to the assignees, whose land is resumed by the Government, was considered by this Court. The three Full Benches of this Court in **State of A.P. v P.Peda Chinnayya**[3], **State of A.P. v Bondapalli Sanyasi**[4] and **LAO-cum-RDO, Chevella Division, Domalguda, Hyderabad v Mekala Pandu**[5] have recognized the principle that the State which assigns the land can always resume the land for public purpose.

Thirdly when a notice is issued by a statutory/administrative authority in compliance with rules of natural justice, the same cannot be faulted. Even if a question of jurisdiction is raised, in the first instance, such question has to be raised before the same authority. Ordinarily a writ petition against notice would not lie. Liberty is given to petitioner to file objections if not already filed and they shall be considered by the respondent in accordance with law.

The writ petition, with the above observations, is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

August 29, 2007
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[1] AIR 1964 SC 326

[2] AIR 1967 SC 340

[3] 1996(2) ALD 1215 = 1997(1) ALT 498 (FB of Three Judges)

[4] 2002(2) ALD 1 = 2002(1) ALT 543 (LB of Five Judges)

[5] 2004(2) ALD 451 (FB of Seven Judges)